

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

2009 JAN -9 PM 2:40

INMATE # CDC V 14724

LEE PEYTON,

PLAINTIFF(S),

v.

S. ROSENBERG, ET AL.,

DEFENDANT(S).

CASE NUMBER

CV 08-8207 (AJW)

BY

ORDER RE LEAVE TO FILE ACTION

WITHOUT PREPAYMENT OF FULL FILING FEE

IT IS ORDERED that the complaint be filed without prepayment of the full filing fee.**IT IS FURTHER ORDERED** that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of \$350.00. An initial partial filing fee of \$_____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of your case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. §1915.

Dated: _____

UNITED STATES MAGISTRATE JUDGE

■ **IT IS RECOMMENDED** that the application of prisoner-plaintiff to file the action without prepayment of the full filing fee be **DENIED** for the following reason(s):

☐ District Court lacks jurisdiction

☒ Inadequate showing of indigency

☒ Failure to authorize disbursements from prison trust account to pay filing fee

☐ Legally and/or factually patently frivolous

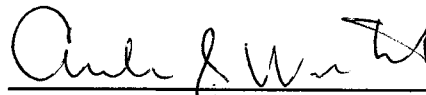
☒ Failure to provide certified copy of trust fund statement for the last six (6) months.

☐ Immunity as to _____

■ Other: Failure to state a claim upon which relief can be granted. See 28 U.S.C. §§ 1915(e)(2)(B)(ii). Plaintiff is attempting to challenge the legality of his conviction and confinement in a complaint under 42 U.S.C. § 1983. He seeks damages and equitable relief in the form of release from custody.

In general, a claim that challenges the fact or duration of a prisoner's confinement should be addressed by filing a habeas corpus petition, while a claim that challenges the conditions of confinement should be addressed by filing a civil rights action. See Wolff v. McDonnell, 418 U.S. 539, 554 (1974); Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973). In addition, because plaintiff's section 1983 damages claims amount to a collateral attack on his criminal conviction and sentence, and because plaintiff has not alleged or shown that his conviction or sentence has been invalidated, those claims are premature under Heck v. Humphrey, 512 U.S. 477 (1994).

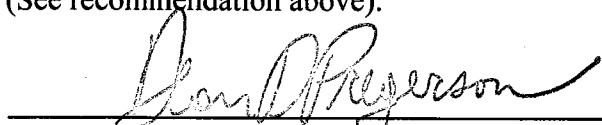
Dated: 1.5, 2009



UNITED STATES MAGISTRATE JUDGE

IT IS ORDERED that the application of prisoner-plaintiff to file the action without prepayment of the full filing fee is: ☒ **GRANTED** ☐ **DENIED** (See recommendation above).

Dated: 1-8-09



UNITED STATES DISTRICT JUDGE

CV-73c (04/06) ORDER RE LEAVE TO FILE ACTION WITHOUT PREPAYMENT OF FULL FILING FEE